Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Cable Act Reform provisions of the Telecommunications Act of 1996	)	CS Docket No. 96-85

To the Commission:

REPLY COMMENTS OF THE
MICHIGAN, ILLINOIS AND TEXAS COMMUNITIES CONSISTING OF:

Michigan: City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, Baldwin Township, City of Battle Creek, City of Birmingham, Caledonia Township, Village of Chelsea, City of Coldwater, Coldwater Township, City of East Tawas, City of Escanaba, City of Ferndale, Georgetown Charter Township, Harrison Township, Holland Charter Township, City of Ishpeming, City of Kentwood, City of Livonia, City of Marquette, City of Plainwell, Richmond Township, Robinson Township, City of Saline, City of Southfield, City of Wyoming, Zeeland Charter Township

Illinois: City of Chicago Heights, Village of Mount Prospect, Village of Skokie, Illinois Chapter of NATOA

Texas: City of Fort Worth, City of Arlington, City of Coppell, City of Flower Mound, City of Frisco, City of Grand Prairie, City of Hurst, City of Kennedale, City of Longview, City of Lewisville, City of Plano, City of University Park

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SUMMARY

MIT Communities respectfully submit these Reply comments to reflect the vital concerns of local franchising authorities ("LFAs") with respect to the Commission's new rules which will implement provisions of the Telecommunications Act of 1996. First, MIT Communities note that the 1996 Act does not limit LFAs' ability to enforce the Commission's technical standards. The Commission certainly lacks the resources and capacity to adequately monitor and enforce compliance with the Commission's technical standards in each LFA. Further, the 1996 Act does not prohibit LFAs and cable operators from voluntarily agree that the operator will comply with and the LFA will enforce such standards. Nor does the 1996 Act affect the renewal provisions in the Cable Act which allow LFAs to address the "quality of the operator's service, including signal quality."

Second, some of the cable interests attempt to inappropriately expand the 1996 Act's modification of Section 624(e). LFAs can still address system design concerns which are necessary to ensure good signal quality and meet community needs. Moreover, the Commission should not engage in a premature, and ill-advised, rulemaking on local needs ascertainment and fact-dependent system characteristics. Congress recognized that LFAs are best suited to this function. The 1996 Act did not change such recognition.

Third, the Commission must not frustrate effective regulation of cable operators' cable programming services tier ("CPST") rates by placing inefficient and costly obstacles in the path of LFAs. In this regard, Congress did not eliminate the bifurcation of regulatory responsibility between the Commission (CPST regulation) and LFAs (basic service tier regulation). The Commission must not abdicate its responsibility over the CPST

by placing review and verification responsibilities on LFAs. LFAs should have 180 days to file a Form 329 complaint after a CPST rate increase becomes effective -- if more than one subscriber complaint is received. LFAs should not have to give advance notice to cable operators of their intent to file a Form 329 complaint. Instead, the LFA should serve a copy of the complaint on the cable operator, who should then have 30 days to respond to the Commission. The changes in the 1996 Act require no further rules with respect to CPST rate complaints. At most, the LFA should be a conduit for subscriber complaints. LFAs should not be responsible for reviewing a cable operator's response to a Form 329 complaint. In addition, Form 329 and LFAs' normal business records are sufficient verification of subscriber complaints. Employees and officials of LFAs and the Commission -- who are also CPST subscribers -- are not precluded from complaining about a rate increase.

Fourth, the Commission must follow the plain language and intent of the 1996 Act and only deregulate truly small cable operators. The affiliation standard the Commission currently uses for small cable system cost of service showings is acceptable so long as the Commission does not go any further. That is, a 20% active or passive investment (or de facto or de jure control) constitutes affiliation. The plain language of the 1996 Act requires that the gross annual revenues of all affiliated entities and persons, including non-cable companies, be aggregated and count toward the $250,000,000 threshold.

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REPLY COMMENTS OF THE MICHIGAN, ILLINOIS, TEXAS COMMUNITIES

The Michigan, Illinois, Texas Communities ("MIT"), by their attorneys, hereby file reply comments in the above-captioned proceeding with respect to the Commission's Order and Notice of Proposed Rule Making, released April 9, 1996 ("*NPRM*").

I. INTRODUCTION

The MIT Communities consist of the following franchising authorities and organizations which represent franchising authorities:

From Michigan: City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, Baldwin Township, City of Battle Creek, City of Birmingham, Caledonia Township, Village of Chelsea, City of Coldwater, Coldwater Township, City of East Tawas, City of Escanaba, City of Ferndale, Georgetown Charter Township, Harrison Township, Holland Charter Township, City of Ishpeming, City of Kentwood, City of Livonia, City of Marquette, City of Plainwell, Richmond Township, Robinson Township, City of Saline, City of Southfield, City of Wyoming, and Zeeland Charter Township;

From Illinois: City of Chicago Heights, Village of Mount Prospect, Village of Skokie, Illinois Chapter of NATOA;

From Texas: City of Fort Worth, City of Arlington, City of Coppell, City of Flower Mound, City of Frisco, City of Grand Prairie, City of Hurst, City of Kennedale, City of Longview, City of Lewisville, City of Plano, and City of University Park.

The MIT Communities respectfully submit a reply to several comments made with respect to: (1) franchising authority involvement in technical standards and technical manners; (2) the proposed Form 329 complaint procedures; (3) the definition of "affiliate" for purposes of Title VI of the Communications Act (47 USC § 521 et. seq.) (the "Act") to determine small cable operator affiliations; and (4) the scope of gross revenues for purposes of small cable operator deregulation under the Telecommunications Act of 1996 (the "1996 Act")[1]. These Reply comments are limited to the foregoing issues.

II. TECHNICAL STANDARDS

A. LFAs May Enforce FCC Technical Standards

MIT Communities support the comments of Comcast, Cox Communications, Kramer, Monroe & Wyatt, New York City, Cablevision Systems, and City and County of Denver, among others, who state that local franchising authorities may and should continue to enforce this Commission's technical standards, but may not enforce technical standards stricter than those of this Commission.

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[1]Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (February 8, 1996).

As these commenters point out, and as this Commission's current technical standards rules acknowledge (by requiring that technical standards complaints go to the local franchising authority before they go to this Commission) the FCC simply is in no position to deal with frequent subscriber complaints about poor signal quality, crosstalk or the other technical problems that lead to an inferior picture. This was true at the time of the Commission's adoption of its technical standards several years ago. It is even more true today given the closing of several of the Commission's field offices. Thus assuring compliance with this Commission's technical standards is best done at the local level. And this Commission must recognize that there are many cable systems -- including those of some of the biggest cable operators -- that continue to have signal quality problems and which require the continued, persistent attention of local franchising authorities so that subscribers get a signal at least minimally in compliance with this Commission's rules.

As this Commission expressly has noticed, and as other commenter have set forth, local franchising authorities under Section 621 of the Act may require adequate assurance that the cable operator has the "technical qualifications" to provide cable service and under Section 626 may require that the operator's proposal contain such material as the franchising authority may require. More generally, Section 626 mandates that in a franchise renewal the resulting franchise meet community needs. Such needs are not met if subscribers are provided with signals which do not satisfy this Commission's technical standards.

B. <u>Voluntary Agreement on Signal Standards Allowed</u>

At most, the 1996 Act's striking certain language from 624(e) prohibits a franchising

authority without more (see below) from "requiring" compliance with this Commission's technical standards in a franchise renewal. However, the change should not prevent or shield a cable operator and municipality from voluntarily agreeing that the cable operator will comply with -- and that the municipality will enforce -- such standards. Thus, if the Commission finds that franchising authorities cannot "require" compliance with its technical standards, it should make clear that voluntary agreements allowing municipal enforcement of such compliance is allowed.

C. Enforcement Allowed Where Signal Quality Deficient

MIT Communities note that Section 626 allows a franchising authority to consider the "quality of the operator's service, including signal quality" during the course of renewal. If, as Congress has clearly stated, signal quality can be considered during renewal, then at minimum, if such signal quality is found to be deficient, under Section 626 a franchising authority as a condition of renewal can require compliance with this Commission's technical standards.

III. EQUIPMENT AND TRANSMISSION TECHNOLOGY

A. Transmission Technology is Limited to Signal Format

The new sentence added to Section 624(e) by the 1996 Act must be interpreted in light of its history. The sentence prohibits franchising authorities from restricting a cable operator's use of "subscriber equipment or transmission technology." The clear background to this are two things: First, the Time Warner situation of 1994/95 where it attempted to mandate that all its subscribers purchase and use expensive set top boxes (principally

because Time Warner wished to scramble, or encrypt, many of its signals). Second, the fact that with the advent of digital compression, converter boxes will be essential for most subscribers until most homes have televisions which are "digital cable TV ready" i.e. able to receive and use digital signals. This transition of home TV's from their current level to being able to directly use digital signals is analogous to the change that occurred in the recent past where television sets evolved from simply being able to receive over the air signals to being "cable-ready."

Thus, the clear meaning of Section 624(e) is that a franchising authority cannot require the cable operator to use the 6 MHZ NTSC analogue technology for its signals. Instead it is the cable operator's choice as to whether to use a 6 MHZ NTSC signal or a digitally compressed signal, with corresponding digital set top boxes as the subscriber equipment needed to decode such signals.

As is set forth next, efforts by the cable industry to expand the clear language of Section 624(e) beyond the preceding are both (1) incorrect, and (2) premature -- something in which this Commission should not get involved at the present time.

B. Transmission Technology

The words used in Section 624(e) are very clear, namely "transmission technology." MIT Communities submit that that has the meaning set forth above -- namely whether the signal is transmitted in an analogue, digital or some other format.

By contrast, the plain meaning of "transmission technology" does not go to matters of system design. A good example of the latter are requirements in franchises that prohibit

excessive amplifier (or other active device) cascades which lead to unacceptable signal quality. For example, a cable franchise may commonly limit an amplifier cascade to 15 devices so as to maintain adequate signal quality towards the ends of a system, thus fulfilling the requirements of Section 626, among others, of assuring the "quality of the operator's service," and "meeting community needs."

The preceding example is an excellent one to show how the attempts by some cable interests to extend the words "transmission technology" is unavailing -- it simply does not go to matters of system design that are necessary to (1) ensure a good signal and (2) meet community needs.

A similar example is nodes sizing. The size and location of the nodes can be very important for communities, with their general preference being towards smaller nodes, subject obviously to cost considerations. For example, in many states, school systems are separate units of local government from counties, cities, villages and townships such that one city may be served by several (non-overlapping) school systems. This is commonly the case, for example, throughout Michigan.

In such situations, municipalities commonly require in their new franchises that the nodes be located such that they correspond with school district boundaries so that subscribers in School District A receive the educational channel appropriate for them are and not (for

example) the educational channel for School District B, which would be of little relevance or interest.[2]

C. Premature

The cable operator filings on this issue are inconsistent and show that some are trying to "stretch" and to convert a prohibition on franchising authority involvement in "transmission technology" into virtually no involvement in relevant aspects of the design and implementation of a cable system. Thus, for example, TCI in its comments tries to press the transmission technology argument the farthest, whereas other cable operators such as Cox, Continental Cablevision, Comcast and others do not take such an extreme position.

MIT Communities respectfully suggest that it is premature for this Commission to make definitive rulings or statements (other than that noted above under Subsections A and B) as to what franchising authority involvement in technical matters impermissibly intrudes on "transmission technology" This is for several reasons.

First, the record before the Commission on this point is scant and contradictory, even amongst cable operator interests.

Second, this Commission has historically had no role and no involvement in franchising decisions and thus has no experience base to assist it in determining where franchise requirements might impermissible intrude on transmission technologies.

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[2]For example, educational channels frequently televise school board meetings and carry information on school events, schedules, menus, makeup assignments and the like which are of no relevance to persons residing outside that school district.

Third, and most important, such decisions are likely to be very fact dependent, with the facts varying greatly across the several thousand cable operators and thirty-eight thousand municipalities in the United States.

The facts that my be relevant include the following: Is this a situation where the cable operator has had deficient service in the past and all essentially agree that the technical design of its system was inadequate to deliver signals to subscribers meeting this Commission's technical standards? What were the results of the ascertainment study or franchising authority determination of community needs on such points as how many channels are needed and what node sizing or arrangement is necessary to meet community needs? Most importantly, what is the specific point of contention at issue -- something the more aggressive cable operators have carefully avoided in their comments. This last point is critical because the issue of local franchising authority pre-emption will ultimately depend on a determination of whether a specific contested requirement is or is not a "transmission technology." This simply cannot be decided in a vacuum. It should be decided on a case by case basis.

IV. THE COMMISSION SHOULD NOT CREATE UNDULY BURDENSOME COMPLAINT PROCEDURES

Nothing in the Act or its legislative history evidences a Congressional intent to create obstacles to the filing of cable programming service tier ("CPST") complaints. Section 301(b)(1)(C) requires subscribers to complain to a local franchising authority ("LFA") before a CPST complaint can be filed at the Commission by the LFA. MIT Communities support the Commission's interim rule of requiring complaints to be filed 180 days after the cable programming services tier rate increase becomes effective. This support is based on franchising authorities having minimal responsibility with respect to filing a Form 329 complaint with the Commission. The MIT Communities, however, oppose the onerous steps the Commission proposes to inject into the complaint process as well as the additional costs the Commission plans to place on franchising authorities.

A. Onerous Burdens

The Commission should not require an LFA to give the cable operator special notice of its intent to file a complaint. Service of the complaint concurrent with its filing with this Commission is sufficient notice. See e.g. 47 CFR § 76.951(10). Similarly, a franchising authority should not be expected to make requests for additional information (e.g. to verify an operator's small system status claim) or review the rate increase form for completeness or accuracy. MIT Communities agree with the comments of the State of New York Department of Public Service (NYDPS) which indicate that a franchising authority which is not certified to regular basic rates may not desire to review a proposed cable programming

services tier rate increase. NYDPS Comments, at 16. It makes no sense to require such an LFA to engage involuntarily in rate increase verification and review.

On a related matter, the MIT Communities oppose the comments of C-TEC Cable Systems, Inc. which would require onerous documentation requirements to verify subscriber complaints. Nothing in the 1996 Act or its legislative history indicates a Congressional intent to require franchising authorities to assemble and create documentation of subscriber complaints. The MIT Communities support the Commission's conclusion that "the records maintained by an LFA in accordance with its regular business practice should be sufficient to establish that an LFA received the subscriber complaints within 90 days of a rate increase." NPRM, at ¶ 21. The MIT Communities respectfully submit that the Form 329 is adequate verification of subscriber complaints, and any requirement of having a LFA employee documenting the receipt of complaints is unduly burdensome.

Further, the Commission should not place the burden on franchising authorities of copying and sending the cable operator's response to the Commission. The time and expense of such an endeavor is an unfunded mandate and is an unnecessary and inefficient intervening step.

In the alternative, if the Commission requires LFAs to bear the cost of sending the cable operator's response to the Commission, the LFA nevertheless should not have the responsibility of reviewing the requested CPST rate increase. If such were the case, some cable operators would certainly argue that the LFA did not properly and adequately review the proposed CPST increase This possibility illustrates the problem of placing CPST

responsibility at the LFA level. Congress intends LFAs to at most be a conduit for subscribers' CPST rate complaints. If the Commission places responsibility on LFAs to forward the cable operator's response, this should at most be a ministerial, non-substantive requirement. The Commission should clearly remove any LFA responsibility with respect to reviewing the operator's response.

B. Bifurcated Regulatory System

Congress bifurcated rate regulation responsibility between the Commission and local franchising authorities. 47 U.S.C. § 543(a)(2). The Commission regulates the cable programming services tier when a complaint is filed. Nothing in the 1996 Act changes this responsibility. Accordingly, cable operators should provide their response to the Commission within 30 days of the filing of a Form 329 complaint. The existing provisions in Section 626 of the Act preclude the Commission from developing rules which place regulatory responsibility over the cable programming services tier in the first instance on LFAs. The Commission cannot abdicate its responsibility over the cable programming services tier to an LFA. Nothing in the 1996 Act changes the bifurcation of rate regulation responsibility. Nothing in the 1996 Act requires that LFAs winnow inappropriate cable programming service tier increase requests.

The Commission should continue the cable programming services complaint process currently in place and only modify such procedures to accommodate the express changes mandated by the 1996 Act. Specifically, the only rules needed relate to: the elimination of

subscriber complaints made directly to the Commission, the timing of filing complaints, and LFAs as a conduit for complaints to the Commission.

C. LFA Employees And Officials Can File CPST Rate Complaints

Finally, the MIT Communities oppose the suggestion by C-TEC Cable Systems, Inc. that a cable programming services tier subscriber who is also an employee or official of a franchising authority cannot complain about a rate increase. Cable operators which comply with the Commission's regulations should not fear rate regulation so much that they ask the Commission to deprive municipal employees and LFA officials of a statutory right to inquire/complain about rate increases. The Cable Act and the 1996 Act do not in any context limit the rights of individuals based on employment or official position. C-TEC Cable Systems, Inc. has no basis to contend that a franchise authority employee/official, or FCC Commissioner or staff person -- who is also a cable subscriber -- cannot ask for review of a rate increase.

V. SMALL CABLE OPERATOR DEREGULATION

A. The Commission Should Use Its Small System Cost of Service Definition of Affiliate

In determining small cable operator status under the 1996 Act, the Commission does not need to distinguish between active and passive investments so long as the ownership threshold of an affiliate is as high as 20%. The MIT Communities support the Commission's use of the affiliation standard set forth in Second Order on Reconsideration, MM Docket No.

92-266, FCC 94-38, 9 FCC Rcd. 4119 (March 30, 1994), at ¶ 120, n. 157.[3] The MIT Communities believe that the definition of "affiliate" set forth in Title VI of the Act plainly expresses Congress' intent without need for additional interpretation. In the context of small cable operators, however, the MIT Communities can appreciate the Commission's attempt to incorporate a level of sufficient investment such that the operator may have some access to or otherwise benefit from the affiliates' resources. In this regard, MIT Communities agree with the comments of Adelphia Communications Corporation, et. al., at 22-23. The MIT Communities respectfully submit that if the Commission utilizes the 20% threshold, it should not distinguish between active or passive interests. The Commission purposefully established this 20% threshold at a higher percentage such that the investor/affiliate will have a significant stake in the cable operator, regardless of active or passive involvement.

The MIT Communities oppose the suggestion in the comments of Small Cable Business Association ("SCBA") and certain other cable industry commenters that the

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[3]The Commission utilized an affiliation standard to ensure that truly small cable operators receive regulatory relief. The Commission stated, "Our concern with small operators is aimed at those companies that do not have access to the financial resources or other purchasing discounts of larger companies. We are thus limiting transition relief to small operators that have no such relationship with a larger company. For purposes of determining whether a larger company has a sufficiently significant interest in, or control over, a small operator to give rise to this concern, we will not extend transition treatment to small operators in which a larger company holds more than a 20 percent equity interest (active or passive) or over which a larger company exercises de jure control (such as through a general partnership or majority voting shareholder interest) we believe that in both of these cases, the large company will have a significant enough stake that it will be likely to extend financial resources to the smaller operator should that operator face financial difficulties." Second Order on Reconsideration MM Docket No. 92-266, FCC 94-30, 9 FCC Rcd at 4173 (February 22, 1994), at ¶ 120, n.157.

Commission develop a new, complicated and subjective affiliation standard for purposes of small cable operator deregulation under the 1996 Act. The Commission should not, and need not, engage in micromanaging corporate relationships to determine whether an investment is "active" or "passive" or whether control is actually exercised.

B. The Commission's Rules Must Aggregate the Gross Annual Revenues of All Affiliates

In order to maintain the integrity of small cable operator relief, the Commission must aggregate the gross annual revenues of all affiliated entities. The MIT Communities agree with the comments of the National Cable Television Association (at 37) in this regard. Cable operators with the advantage of having several size corporate parents or investors need not receive the same de-regulatory benefits as truly small cable operators. Moreover, aggregation minimizes the attractiveness and use of complicated corporate financial structures in order to avoid the gross revenue limit.

Cable operators often indicate to local franchising authorities during either transfers or renewals about the benefits of having a significant corporate parent or investor. For example, a proposed franchise transferee will often include the SEC 10-K report of its ultimate, public corporate parent to demonstrate its financial ability to operate the cable system. Truly small cable operators do not have the luxury of making such a representation. Cable operators cannot have it both ways: claiming access to their financial parents' resources for transfer purposes, while ignoring the parent when trying to obtain regulatory relief as a small cable operator.

As the Commission notes in its *NPRM*, the plain language of the 1996 Act requires "an operator with multiple affiliates to aggregate the gross annual revenues of all of the affiliates and to compare this aggregate figure to the $250 million threshold." *NPRM*, at ¶ 86. The Commission's rules cannot make the statute's use of the word "aggregate" meaningless. Accordingly, the Commission's rules must aggregate the gross annual revenues of all affiliates for purposes of determining small cable operator status under the 1996 Act.

C. The Gross Revenues of the Cable Operator Should Not Be Excluded

Section 623(m) of the Act clearly requires inclusion of a cable operator's gross annual revenues when determining whether the $250,000,000 threshold is met. The reference in the 1996 Act to affiliations with "an entity or entities" is intended to provide a comprehensive examination of the cable operator's financial resources. Thus, the cable operator's access to financial resources, as well as its own, are relevant. The plain language and intent of the 1996 Act do not need unnecessary amplification.

D. The Act's Plain Language and Intent Require Inclusion of Non-Cable Operator Gross Revenues

Nothing in the plain language of the Act nor its legislative history indicates that only cable operator revenues are to be aggregated for purposes of the $250,000,000 gross revenue standard. The MIT Communities oppose the comments of C-TEC Cable Systems, Inc. which lack any support for the contrary position. Congress was concerned with providing truly small cable operators with regulatory relief. H.R. Rep. No. 204, 104 Cong. 1st Sess. 110 (July 24, 1995). If Congress had intended to exclude non-cable operator revenues in Section

623(m) presumably it would not have used the broad phrase "any entity or entities." Indeed, Congress could have expressly stated that only cable revenues were relevant. Congress did not. Therefore, MIT Communities respectfully submit that the Commission not create an ambiguity when one does not exist. See e.g. Comments of US West, at 5. Moreover, the Commission should not insert language into the Act which Congress intentionally omitted.

Aside from the plain language of the statute, and the lack of any authority to the contrary, aggregation and inclusion of non-cable revenues makes sense. The Congressional intent of providing truly small cable operators with regulatory relief would be defeated if large entities, such as telephone companies, with over $250 million in revenues, could start up or acquire a cable company as a subsidiary, and receive small cable operator relief. Such a result would be a perversion of the plain language and intent of the statute.

Respectfully submitted,

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